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Attorneys for Defendants
NEATFREAK GROUP CORP. and
NEATFREAK GROUP, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SEVILLE CLASSICS, INC., a
California corporation,

Plaintiff,

vs.

NEATFREAK GROUP, INC., a
Canada corporation; NEATFREAK
GROUP CORP, a Delaware
corporation; TARGET
CORPORATION, a Minnesota
corporation; and DOES 1 – 10,
inclusive,
Defendants.

Case No. 2:15-cv-06237-SJO-AS

**DEFENDANTS NEATFREAK
GROUP CORP.'S AND
NEATFREAK GROUP INC.'S
JOINT RESPONSE TO
PLAINTIFF SEVILLE CLASSICS,
INC.'S MOTION TO DISMISS**

1 Defendants Neatfreak Group Corp. (“NGC”) and Neatfreak Group, Inc.
2 (“NGI”, and collectively with NGC, “Neatfreak”), by and through their
3 undersigned counsel, submit their joint response to plaintiff Seville Classics,
4 Inc.’s (“Plaintiff”) motion to dismiss Neatfreak’s inequitable conduct
5 counterclaim and to strike the corresponding affirmative defense (“Motion to
6 Dismiss”, ECF No. 36).

7 Plaintiff’s Motion to Dismiss is untimely. Neatfreak’s Answer,
8 Affirmative Defenses and Counterclaims (ECF No. 27) were electronically filed
9 and served upon Plaintiff before 4:00 p.m. PST on December 28, 2015. Pursuant
10 to Fed. R. Civ. P. 12(a)(1)(B), Plaintiff’s responsive pleading was required be
11 filed by no later than 21 days thereafter, January 19, 2016 (as January 18, 2016
12 was a legal holiday). However, Plaintiff’s Motion to Dismiss and supporting
13 memorandum were not filed until January 20, 2016. Inasmuch as Plaintiff did
14 not request any extension of time to file its responsive pleading before the
15 deadline of January 19, 2016, Plaintiff is now required to bring a motion for an
16 extension of time, demonstrating excusable neglect, in order for its Motion to
17 Dismiss to be considered by the Court. *See*, Fed. R. Civ. P. 6(b)(1).
18

19 Nevertheless, Neatfreak does not oppose Plaintiff’s belated Motion to
20 Dismiss on the basis of its untimeliness. Rather, within 21 days following the
21 January 20, 2016 date of service of Plaintiff’s Motion to Dismiss, Neatfreak
22 intends to file an amended counterclaim pursuant to Fed. R. Civ. P. 15(a)(1)(B),
23 rendering Plaintiff’s Motion to Dismiss moot. Contemporaneously with the
24 filing of its amended counterclaim, Neatfreak intends to file a motion to amend
25 its inequitable conduct affirmative defense, to comport with its associated
26 amended counterclaim.
27
28

1 Neatfreak respectfully submits that, upon the filing of its amended
2 counterclaim and motion to amend its inequitable conduct affirmative defense,
3 Plaintiff's Motion to Dismiss will be rendered moot. Accordingly, Neatfreak
4 respectfully requests that, upon such filings, the hearing for Seville's Motion to
5 Dismiss, set for February 22, 2016 be stricken.

6 Respectfully submitted,

7 Dated: January 29, 2016

PATZIK, FRANK & SAMOTNY LTD.

8 By: /s/ Jordan Herzog

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19 Attorneys for Defendants

20 Neatfreak Group Corp. and

21 Neatfreak Group, Inc.

CERTIFICATE OF SERVICE

The undersigned counsel for Defendants Neatfreak Group Corp. and Neatfreak Group, Inc. hereby certifies that a true and correct copy of the foregoing document was filed electronically by means of the Court's ECF system on January 29, 2016. Pursuant to Local Rule 5-3.2.1, delivery of the notice of electronic filing that is automatically generated by ECF constitutes service pursuant to the Federal Rules of Civil Procedure on counsel of record for Plaintiff, who is a registered user of ECF.

/s/ Jordan Herzog

Jordan Herzog